

Section 25. Grievance Procedure

(a) Definition. A grievance shall be defined as any dispute which involves the interpretation of any provision of this Memorandum of Understanding during its term, or any provision of the Personnel Rules, or any applicable written departmental rules, excluding all ordinances, resolutions, rules and regulations, the subject of which is not specifically covered by the provisions of this Memorandum of Understanding. Such excluded ordinances, resolutions, rules and regulations shall not be subject to the grievance procedure set forth in this section.

(b) Initial presentation. The initial (first level) presentation of a grievance shall be to the immediate supervisor of the employee claiming to have a grievance. The grievance may be either oral or in writing. If made in writing, the grievance shall comply with the requirement of subsection (c) for a formally presented grievance.

(c) Formal presentation. The formal presentation of a grievance shall be written and shall state which provision of this Memorandum of Understanding has been misapplied to the employee's detriment, and shall indicate the redress sought. The grievance shall be signed by the individual or Union presenting the grievance. In the event more than one individual is alleged to be aggrieved, the grievance may be signed by a duly authorized representative of the Union, in which case the grievance shall indicate the names of the persons on whose behalf it is filed. In the event the person to whom the grievance is presented determines that the grievance is defective on its face, that person shall reply in writing to the filer within 12 days after receiving the grievance, indicating in writing the specific defects. The reply shall specify that the grievant has 12 days to correct the defects or the grievance shall be deemed to be withdrawn. If the grievance is not corrected within said 12-day period, it shall be deemed to have been withdrawn.

(d) Time limits. A grievance shall be filed within 15 days of the incident or occurrence about which the employee claims to have a grievance. The grievance may be filed no later than 30 days following such incident or occurrence if the employee can show that within 15 days of the occurrence the employee did not have actual knowledge of the occurrence or had no reason to know of it.

(e) Representation. The grievant shall have the right at all steps of the grievance procedure to be represented by a person or organization of the grievant's own choosing; provided, however, that if the grievant is not represented by the Union, the grievant shall present to the City a written waiver of the right to be represented by the Union and shall, in writing, hold the Union harmless from any liability arising from the lack of Union representation.

(f) Effect of a grievance. The making or filing of a grievance shall not prevent the City or any authorized employee of the City from taking action deemed appropriate, nor shall it have the effect of suspending action previously taken even though the action may involve or be part of the subject matter of the grievance.

The fact that a probationary employee has filed a grievance or has authorized the Union to file a grievance shall not be taken into account in any evaluation of that employee's work

performance. The failure of an individual to file a grievance in a particular situation does not of itself establish a past practice.

(g) Disciplinary matters. In the event an employee feels that a discharge, suspension, or demotion is unjust, the employee shall have the right to appeal the case through the grievance procedure by filing a grievance through the City Manager within 12 days from the date the employee was notified of the action.

Untimely appeals shall not be entertained under the grievance procedure; provided, however, that the City Manager shall have sole discretion to allow the filing of an appeal of a disciplinary action with 30 days from the date the employee was notified of the action if the City Manager determines that the failure of the employee or the employee's representative to file the appeal within the normal 12-day period was the result of excusable neglect or inadvertence.

Upon the timely filing of a grievance, the provisions of subsections (m) through (r), inclusive, shall apply. The discharge of probationary employees shall not be subject to the grievance procedure.

The decision of the arbitrator on a disciplinary matter grievance shall be final and binding upon the parties, except as provided in this paragraph. The arbitrator shall not substitute their discretion for that of the City, and the City's decision or penalty will be upheld unless there has been a clear abuse of discretion on the part of the City.

(h) Days. The time limits provided herein refer to calendar days.

(i) Waiver of time limits. The time limits provided herein may be waived by the mutual consent of the parties.

(j) Department head. A grievance which is not settled at the first level may, within 12 days of the decision of the supervisor, be appealed in writing to the department head. If so appealed, the grievance, unless previously formally presented, shall be presented as provided in subsection (c). The department head shall render a decision and comments in writing and return them to the employee within 12 days after receipt of the formal grievance.

(k) Power of immediate supervisors and department heads in resolving grievances. In the resolution or decision of a grievance, no immediate supervisor or department head shall modify any procedure or rule within the department unless and until such supervisor or department head shall have received the written approval of the City Manager. However, the immediate supervisor and department head may interpret and apply existing procedures or rules.

(l) City Manager. A grievance which is not settled at the department head level may be appealed in writing to the City Manager within 12 days of the decision of the department head. Within 12 days after receipt of the appeal, the City Manager shall set a date, which is not more than 12 days from the date of receipt of the appeal, to meet with the grievant and with

other appropriate persons to attempt to resolve the grievance. If a solution is not agreed upon, the City Manager shall render a decision within 12 days of the meeting.

While a grievance appeal is pending before the City Manager, the parties, by mutual agreement, may request mediation. If the parties are unable to agree upon the mediator, they shall request the California State Mediation Service or a suitable alternate to provide a mediator. Costs of mediation shall be divided one-half to the City and one-half to the employee. The mediator or mediating agency shall make no public recommendations, nor take any public position concerning the issues, but shall work directly with the parties involved.

(m) Determination by arbitrator or adjustment board. A grievance which is not settled by the City Manager may be appealed in writing for final determination. The written notice of appeal must be filed with the City Manager within 12 days of the date of the City Manager's written decision.

If the grievance is of a disciplinary action consisting of a suspension of less than 30 days or another action where there is no discharge, demotion, or reduction in pay, the grievance shall be submitted to an adjustment board comprised of two (2) employee representatives and two (2) representatives of the City.

No decision of the adjustment board shall be final and binding without receiving the affirmative votes of at least three (3) members. The parties may mutually agree to submit other types of grievances to the adjustment board.

If the grievance is of a disciplinary action consisting of a discharge, a suspension of thirty (30) days or more, a demotion, or a reduction in pay, or a dispute which involves the interpretation or application of any provision of this Memorandum of Understanding, any provision of the Personnel Rules, or written departmental rules, or a dispute which has been submitted to an adjustment board and the board has been unable to arrive at a majority decision, the grievance shall be submitted to an arbitrator.

(n) Selection of arbitrator or adjustment board. Within 12 days after the filing of the appeal the City Manager and the grievant shall meet or otherwise communicate to select an adjustment board or mutually acceptable arbitrator, as the case may be, who agree to serve. Where the matter is to go to arbitration, if the parties cannot agree, a list of five arbitrators will be obtained from the California State Conciliation Service, American Arbitration Association, or some other source mutually agreed upon. If the parties cannot agree on one of the names on the list, each party (beginning by lot) shall alternately strike one name from the list until one name remains, who shall be the arbitrator if that person agrees to serve. If that person will not serve, the process shall be repeated until an arbitrator is found.

(o) Decision. The decision of the arbitrator shall be in writing and shall set forth the findings of fact and conclusions on the issues. It shall be submitted to the City Manager and the grievant and shall be final and binding upon the parties.

(p) Changes in Memorandum of Understanding not arbitrable.

Proposals to add to or change this Memorandum of Understanding or written agreements or addenda supplementary hereto shall not be arbitrable, and no proposal to modify, amend, or terminate this Memorandum of Understanding, nor any subject matter arising out of or in connection with such proposal, may be referred to arbitration under this section. Neither any adjustment board nor arbitrator shall have the power to modify this Memorandum of Understanding or written agreements or addenda supplementary thereto, or to establish any new terms and conditions of employment.

(q) Limitation. No adjustment board or arbitrator shall entertain, hear, decide, or make recommendations on any dispute, unless such dispute falls within the definition of a grievance, as set forth in subsection (a) above.

(r) Costs. The fees of the arbitrator (including any per diem expenses, travel and subsistence expenses), the cost of any hearing room, and the cost of preparing the transcript of the hearing, if any, for the arbitrator shall be borne one-half by the City and one-half by the grievant. All other costs and expenses shall be borne by the party incurring them.

(s) Exclusiveness of remedy. The grievance procedure shall be the exclusive remedy for matters which are grievable thereunder.

Section 26. Loss of Driver's License

(a) An employee whose driver's license is suspended, revoked, or becomes invalid, which prevents the employee from operating a vehicle during the course of the employee's duties for a period of six (6) months or less, shall be subject to a salary reduction of 5% during the period of such suspension, revocation, or invalidity.

(b) If the license revocation, suspension, or invalidity significantly prevents the employee from performing a predominant amount of the employee's duties, the City Manager may suspend the salary and benefits of the employee for the duration of the license suspension, revocation or invalidity. Alternatively the City Manager may assign such employee to the duties of another classification if the employee is qualified to perform such duties for the duration of the license suspension, revocation, or invalidity. The salary of such employee may be adjusted to the step in the range of the classification to which the employee is reassigned which most closely approximates a five percent (5%) loss of salary.

(c) If the loss of such driver's license is attributable to the use of alcohol or drugs, the employee shall agree to and shall faithfully participate in a counseling and rehabilitation program agreed to by the City to correct the problem, if requested to do so by the City Manager. Failure to agree and to faithfully participate in such a program shall be cause for dismissal.

(d) Any suspension, revocation, or invalidity of the driver's license of an employee for a period of more than six (6) months so as to prevent the employee from operating a vehicle during the course of the employee's duties, or any failure of an employee to notify the City of any suspension, revocation, or invalidity of the employee's driver's license, regardless of